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Design Piracy and Self-Regulation: The Fashion Originators' Guild of America, 1932-1941

Sara B. Marcketti and Jean L. Parsons<sup>1</sup>

The concept of copying or “knocking-off” another designer’s idea is an accepted practice in the apparel industry. Legally, designers and manufacturers have had tenuous success in proving their work “original and novel” as required by U. S. patent laws and copyright laws often don’t apply to apparel. The speed of fashion change and reliance on repetition of ideas at various price points makes design protection difficult and controversial. Historically, arguments for and against measures to control copying of apparel most frequently divided along price lines. The Fashion Originators’ Guild of America, in existence from 1932 until 1941, developed one of the more successful attempts to control design piracy in the dress industry. This paper examines the ethical, economic, and social considerations in arguments for and against design protection, and analyzes the role of designers, manufacturers, retailers and consumers in both the initial success and ultimately the failure of the FOGA.

Keywords: apparel design, copyright, design piracy, Fashion Originators’ Guild of America, knock-off

DESIGN PIRACY AND SELF REGULATION: THE FASHION ORIGINATORS’ GUILD OF  
AMERICA, 1932 TO 1941

The concept of copying or “knocking-off” another designer’s idea is an accepted and even institutionalized practice of the apparel industry. Although design piracy is most often used to turn high-end designs into less expensive goods, couture designers have also copied the works of other designers and artists.<sup>2</sup> Some in the industry believe that “today’s knock-off houses provide good value and style,” while others suggest the possibility that at least some apparel firms producing pirated apparel “fund organized crime and terrorism.”<sup>3</sup> Today, many designers aggressively protect certain elements of their merchandise through trademarks or patents, but apparel designs are virtually impossible to protect. Legally, designers and manufacturers have had tenuous success in proving their work “original and novel” as required by United States patent laws, and copyright laws have often not applied to apparel. The speed of fashion change, and reliance on repetition of ideas at various price points makes design protection both difficult and controversial.

The question of social responsibility, in an industry where copying fashion designs has always been pervasive, was and is vague. Individuals within the apparel industry have consistently expressed ambiguity about the issue, and while the piracy of trademarks, labels and even unique design components is considered unethical, the direct copying of clothing styles often is not. In the past, some believed there was a clear-cut ethical problem with copying apparel designs, while others defended the practice as essential in providing style to consumers of lower priced goods.<sup>4</sup> Historically, retailers, designers and manufacturers all presented arguments both for and against measures to control the copying of apparel. These arguments most frequently involved tangible and immediate issues about cost and quality of the dresses marketed, and less so any ethical issues related to plagiarism. The argument that copying was and is an essential component in fashion diffusion was the most frequent justification for design piracy.

One of the more successful attempts to control design piracy in the dress industry was by The Fashion Originators' Guild of America (FOGA), in existence from 1932 until 1941. The purpose of this study was to examine the ethical, economic, and social considerations in the historical arguments for and against design protection, and to analyze the role of designers, manufacturers, retailers and consumers in both the initial success and ultimately the failure of the FOGA to control copying. The guild's administrative program against design piracy is an important historical piece, and highlights the controversial debates concerning the ability to regulate fashion's oldest "creative" practice. The historical arguments provide critical insight into how and why design piracy became a standard practice in the industry and they are essential in contemporary discussions of social accountability when it comes to "knocking-off" apparel designs. We continue to see benefits for some, but considerable losses for others in this routine industry practice. The FOGA provides an important early case study that highlights the consequences of a program of industry-wide self-regulation.

## **Methods**

This research was conducted with the techniques of historical analysis to collect, analyze, and interpret data. Secondary sources directed the search for primary data. The primary data was "synthesized into a meaningful pattern of reconstructed truth, an interpretation, using both imaginative insight and scholarly objectivity."<sup>5</sup> Journals, newspapers, trade publications, and magazine articles from 1930 to 1944 were systematically analyzed. Beginning with *The New York Times* index, articles that dealt with the FOGA, design piracy, and copyright dress and textile issues were identified and examined. *Women's Wear Daily* was systematically scanned and read for mention of the FOGA from 1931 to 1941. Legal documentation, including the incorporation papers of the FOGA and the docket of FOGA cases argued in the United States District Court in southern New York and the twelve briefs of the United States Supreme Court

case, *FOGA v. the Federal Trade Commission*, was analyzed for recurring themes.

Governmental reports from the period, including the *Working Papers of the National Recovery Administration's Division of review on design piracy* of 1935 and the *National Recovery Administration's hearings on the codes of fair competition for the dress manufacturing industry* were also evaluated. Editorial issues pertaining to the controversies of design piracy and protection in the 1930s and 1940s in the *Journal of the Patent Office Society*, the *Harvard Law Review*, and the *Journal of Retailing* were taken into account in the arguments for and against copying. Primary research relating to the FOGA was also conducted in museums, archives and special collections in New York City. This included FOGA registered dresses, the memoirs of FOGA founder Maurice Rentner, sketches submitted for registration with the Guild by FOGA president Herbert Sondheim, and the Bergdorf Goodman Family Records.<sup>6</sup>

### **Design Piracy: The Beginnings**

The practice of copying both garment designs and company trademarks began early in the development of the United States apparel industry. Although dressmakers often copied and/or adapted the ideas of French couture designers for the custom market, the rise of the ready-made industry meant an increased number of designers and manufacturers attempting to trade on the reputation of Parisian design. As the women's ready-made industry expanded rapidly in the 1890s, a trickle-down process of copying within the U.S. industry became a widespread practice. Style change was considered "the very essence of the industry," but something that created "a market with laws all its own."<sup>7</sup> One of the most idiosyncratic characteristics of the women's trade was the rapidity with which rival firms copied high end manufacturers. This led to the observation that styles were copied so quickly that any innovative style was available to all consumers virtually immediately, at successively lower price points.<sup>8</sup>

The pervasiveness of style piracy affected the very nature and organization of the women's apparel industry. As a design was copied at lower price points, the market was flooded with cheap imitations of higher end goods. Manufacturers who invested in designers and in the legal purchase of French models to copy saw their product devalued through repetition in cheaper goods. As described by Cohen, after the expense of "thousands of dollars" to create a design intended to appeal to the American customer, copies appeared "within forty-eight hours." The only recourse was "multiplicity and rapidity of design at such frequent intervals" that competitors would "lag behind."<sup>9</sup> Hence, manufacturers constantly introduced large numbers of new style variations.<sup>10</sup>

Leading trade publications called for collective action by both manufacturers and retailers to deal with piracy as early as 1910. *Women's Wear* called the practice the "copying evil."<sup>11</sup> The problems of piracy extended to all levels, including the needle-workers. Frequently paid by the piece, they couldn't learn styles fast enough to master new construction techniques and details, and thus could not make a living wage.<sup>12</sup> Manufacturers were urged to reduce the number of style offerings. One recommended solution was the trade-marking and/or branding of women's apparel. Although the practice had existed in men's wear for several decades, few women's wear manufacturers or companies appear to have adopted the suggestion.

There was a brief reduction in the amount of design piracy during the years of World War I. After the war, *Women's Wear* editors pleaded with manufacturers not to return to the old practices of excessive style changes and offerings. However, along with a period of economic prosperity from 1921 to 1927, style and fashion became even more important in the sale of apparel. According to Nystrom, an increased interest in fashion meant the continued practice of "one of the most outstanding evils of the apparel industry, style piracy, or copying of the successful styles designed by other organizations."<sup>13</sup> The amount of copying continued unabated,

with the result that retailers adopted a “hand-to-mouth” approach to buying, waiting until the last minute to make purchases so as not to be left with a stock of goods that suddenly were not the newest style.

The sale of most types of women’s apparel declined during the 1920s, at least in part because of fashion change. Sales of dresses, however, reached new highs. At the same time the apparel industry began the very slow process of recognizing the creativity of its own designers and stylists. According to a 1936 study on design as an occupation, in the 1920s firms went “looking for American designers.”<sup>14</sup> A number of industry organizations were founded in support of more ethical ways of doing business, not only in the design of apparel, but also in the trade practices between retailers and manufacturers. Other organizations such as The Fashion Group were also established in this period.<sup>15</sup>

At the beginning of the depression, the dress industry was the largest of the needle trades. The economic problems of the depression had minimal effect on the growth of the dress industry in New York in terms of overall volume, but initially more high-price than low-price dress companies went out of business. At the same time, segmentation of wholesale prices within the industry increased. According to John Keating, legal counsel for the Dress Code Authority, retail stores began to segment by price and type of merchandise, and to hire buyers for these individual departments. Expensive, medium, and bargain dress departments were created. The dress industry was, as a result, forced into specialized price lines.<sup>16</sup> Manufacturers segmented into very specific price points, with some selling dresses at only one wholesale price.

The principal adjustment for the dress industry was the increased number of dresses manufactured and sold at the lower price points. According to a report of the General Executive Board of the International Ladies Garment Workers Union:

The crisis, within the past three years, has practically revolutionized the main lines of dress merchandise to meet a growing demand for cheaper garments. As a result of this

tendency, the number of firms manufacturing higher grade dresses has tremendously decreased, giving way to \$3.75 and \$6.75 production lines which today constitute the bulk of the market's output. In a word the production slogan in the New York dress industry has now become not quality but cheapness, and as the cost of materials, overhead, and marketing does not vary substantially between firm and firm, this rush for cheapness has been carried on principally at the expense of labor.<sup>17</sup>

Manufacturers who sold lower priced goods were able to produce cheaply because they did not pay for designers or for the legalized copies offered by various style companies – they copied. In addition, there was less obvious visual difference between the copies and the higher and middle price ranges “to the inexperienced eye,” because of improvements in fabric quality and in technology.<sup>18</sup> The high-price houses hired designers, sent them to Paris to research (and sometimes copy) the new styles, and took the risks associated with being innovative. These manufacturers suffered most from unchecked design piracy. It was in this changed competitive climate that the Fashion Originators Guild of America was formed.

### **The FOGA**

The FOGA incorporated in New York State on March 14, 1932 with the stated objective to protect the “originators of fashions and styles against copying and piracy of styles of any trade or industry.”<sup>19</sup> The Guild, founded by designer and manufacturer Maurice Rentner, was an organization of twelve leading ladies' dress manufacturers located in the New York area. It was built on a foundation of retailer-manufacturer collaboration in a movement to protect and popularize original styles. Secondary objectives listed by the Guild were, “to promote cooperation and friendly intercourse in the wearing apparel industry, to establish uniformity in the usages of the trade, to disseminate information and literature, to augment the sale of goods manufactured and sold, and to advance the trade and commercial interests of Guild members.”<sup>20</sup>

The FOGA sought to do all of these things through extensive advertising and promotional campaigns in N.Y. newspapers and trade magazines, through the establishment of a registration bureau for original dress designs, and through the issuance of labels to original dress



manufacturers. They initially targeted the better priced manufacturers, wholesaling at \$22.50 and higher, to join the Guild's program. Small, individually owned retail shops and departments stores joined the program, whereas the cooperation of the larger and more powerful retail associations, such as the National Retail and Dry Good Association or the Associated Merchandising Corporation, was avoided. By 1932-33, some of the stores that agreed to cooperate with the guild included Hattie Carnegie Retail, Bergdorf Goodman, Filenes' Brothers, and Nettie Rosenstein.<sup>21</sup>

The Guild advertised to such a degree in the early 1930s that it was difficult to turn a page of *Women's Wear Daily* without seeing either a promotional message from the Guild or the joined advertising of the Guild with retail and manufacturing shops. During the years 1932 to about 1936, the Guild was everywhere within the pages of the trade press, with multiple ads, announcements of Guild-sponsored fashions shows, and full-page announcements. The Guild even permeated tangentially related sections of *Women's Wear Daily* including reports in the regional markets of the United States, including St. Louis and Chicago, among others.

The FOGA was divided into the following divisions: the dress division, composed of manufacturers of ladies and misses' dresses; the coat division, composed of manufacturers of ladies and misses' coats; the junior miss division, composed of manufacturers of junior misses' dresses; and the sportswear division composed of manufacturers of knitted ladies sportswear.<sup>22</sup> The FOGA also included a textile and fabric division and a "Protective Affiliate" division composed of nonmember ladies' garment manufacturers who cooperated in the style protective program of the Guild.

To facilitate a program to "confront the demoralizing and destructive practice in the trade, known as style piracy," the Guild established a system to register the original designs of Guild members and to issue labels to Guild registered merchandise.<sup>23</sup> Registration of original

designs was an easy process. Manufacturers submitted a slip of paper with a sketch and brief description of their design, and signed an affidavit of originality. The design was assigned a model number by the Guild, stamped with the Guild's logo, and dated to establish priority so the originator could have exclusive retail rights. Sketches were not cross-referenced or compared with other registered designs and sketches were returned to the manufacturer.<sup>24</sup> Foreign models and styles considered generic were not subject to registration.<sup>25</sup>

Once registered, manufacturers obtained labels for their designs which stated, "Registered with the Fashion Originators' Guild of America" or "An Original Design Registered by a member of the Fashion Originators Guild." According to a 1936 district court ruling, these labels "came to have a definite significance as indicating that the dresses bearing the label represented quality merchandise manufactured according to original designs by skilled workers" (See Figure 1).<sup>26</sup> The Guild estimated that members and affiliates registered 40,000 to 50,000 styles a year, and about half of these styles were in the price range of \$16.75 and up.<sup>27</sup>

"Insert Figure 1 about here"

In order to protect original designs, the Guild enacted a set of agreements known as "Declarations of Cooperation" between manufacturers and retailers. These signed agreements included clauses that retailers would not knowingly or intentionally purchase copied merchandise and that the retailer would return to the manufacturer any copies bought through misrepresentation or error. The Guild employed secret investigative shoppers who searched member and nonmember stores for supposed copies of merchandise. These were removed from retail stores and evaluated by a piracy committee of impartial retailers. Those retailers who refused to remove from sale items deemed copies, or refused to sign pledge cards, were "red-carded" by the Guild.

Once a month, the Guild sent a list of all non-cooperating, red-carded merchants to retailers and manufacturers. Guild members were instructed to show, sell, and ship merchandise only to those department and specialty stores who acted in full collaboration with the signed “Declarations of Cooperation against Copying.” Those retailers red-carded by the Guild included Strawbridge and Clothier, Philadelphia; R.H. White and Company, Boston; Ed. Shuster Company, Milwaukee; Bloomingdale Brothers, New York; J.L. Hudson Company, Detroit; and The Hub, Baltimore.<sup>28</sup> Resigning Guild members were not allowed to return to the Guild for a period of six months and were fined a penalty of up to \$5000. By 1936, manufacturer membership in the Guild numbered approximately 200 to 250 and retailer cooperation numbered 12,000 to 12,500 individuals, co-partners, and corporations, located throughout 32 states in the United States, but principally in New York City, Chicago, and Boston.<sup>29</sup>

#### *New Regulations and Controversial Policies*

Beginning in April of 1935, two major changes in the Guild’s policies raised alarms with both retailers and low-price dress manufacturers. First, the Guild expanded its guardianship over design piracy to include moderately priced lines wholesaling from \$10.75 to \$16.75. This change was supported by The Dress Creators’ League of America, a group of ladies’ dress manufacturers with wholesale prices in this targeted price range. In 1935, the League had become an affiliate of the FOGA and used their design registration bureau. Others in the industry also agreed, or at least went along with the extension of the Guild’s program into these lines, until the Guild began a program in October of 1935 to extend the protection of styles to the \$6.75 to \$8.75 wholesale price lines. It was at this point that the most crucial controversy surrounding the FOGA’s policies began.<sup>30</sup>

In the latter part of 1936, manufacturers of dresses wholesaling at \$3.75 and lower were admitted as protective affiliates of the Guild. This extension to lower priced merchandise caused

an uproar from nonmember manufacturers, chain store operators, buying syndicates, and others in the dress industry. The primary objection was that the main purpose of these firms was to copy and adapt the designs of higher priced dresses for the mass market, usually called the popular priced group.<sup>31</sup> A decision to oppose the style registration system of the Guild on the basis that it was “monopolistic and illegal” was reached by members of the Popular Priced Dress Manufacturers Group, Inc. who produced in the \$4.75 and under categories. This organization represented over 400 manufacturers of popular priced dresses wholesaling below \$6.75. Popular priced groups in the protective affiliates of \$6.75 to \$8.75 withdrew from the Guild in September of 1936.<sup>32</sup> Retail stores that refused to participate with the Guild, or to sign new “Declarations of Cooperation” within 8 to 10 days were “red-carded” by the Guild. Furthering their program, the Guild refused to ship any merchandise already on order to red-carded retailers. By February of 1936, the Guild estimated over \$500,000 worth of orders was held back by manufacturing members.<sup>33</sup>

The second change that caused broad concern over the Guild’s practices was when it endeavored to formulate a code of fair trade practices that went beyond its initial objective to eliminating style piracy by “giving protection, support, and counsel to every group within the industry who honestly and competently creates designs.”<sup>34</sup> The new regulations included the prohibition of members from the following: participating in retail advertising, selling at retail, selling to businesses conducted in residences, residential quarters, hotels, or apartment houses, and showing manufacturer models in fashion shows not supported by the Guild. The guild also sought the eradication of unwarranted returns and cancellations of merchandise and the elimination of discounts to retailers by urging members to uphold 8% end of month selling terms.<sup>35</sup>

Retailers considered the Guild's activities an attempt to regulate and limit their production, and overall, restrict their rights in operating their stores. The Guild maintained that, "fair trade practices, in the development of which the large retail organizations participated, are designed to protect the ethical retailer, equally with the ethical manufacturer."<sup>36</sup> The provisions were seen as necessary as, "success even in a bitterly competitive industry such as this must not necessarily be achieved by trampling upon the rights of others."<sup>37</sup>

These two major changes to the Guild's original program against style piracy caused industry watchdogs, large retail associations, and the Federal Government to take notice. The Federal Trade Commission began hearings on the program of the Guild in 1936. In February 1939, after countless hearings held in New York, Massachusetts, and Pennsylvania, the FTC ordered the "combination known as the FOGA to cease and desist" from their monopolistic practices. The ruling was bitterly contested and the fight was carried to the United States Circuit Court of Appeals. On January 23, 1940, that court ruled the Guild had been guilty of unfair practices; that while the Guild's intention to suppress style piracy might be justifiable, the means used were illegal. This decision was petitioned to the United States Supreme Court for review. On March 3, 1941, Justice Black delivered the opinion of the court, agreeing with the decision of the FTC that the "purpose and object of the combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition declared by the Sherman and Clayton Acts."<sup>38</sup> The cease and desist order was upheld, the Guild disbanded, and with it the most elaborate plan to put a stop to design plagiarism ended.

### **The National Recovery Administration Hearing: The Design Piracy Debate**

According to Maurice Rentner, the "devastating evils growing from the pirating of original designs" destroyed the interests of manufacturer, retailer, consumer, and labor.<sup>39</sup> The

Guild maintained that it was trying to protect ethical retailers and manufacturers, but to other factions the issues were considerably less clear-cut. The arguments both for and against the Guild's efforts can be characterized as falling into two broad areas: technical issues and cost/benefit issues. The former hinged on the difficulty of actually defining what constituted an "original design." The latter were complex and multifaceted, as they raised issues that involved fair labor, the relationships between retailers and manufacturers, and the rights and privileges of the consumer. Arguments often overlapped or were contradictory. One of the primary sources concerning the debates on design piracy is the National Recovery Administration's Hearing on the Codes of the Dress Industry. As seen in the NRA arguments, the issue of defining an original design was certainly the most difficult in terms of actual regulation and control of presumed copies. However, FOGA members, the press and participants in the NRA hearings also debated the social implications and consequences. This section will examine these arguments for and against control of design piracy, using the NRA hearing as a focal point.

#### *Competition and Regulation of Originality*

The National Industrial Recovery Act, which passed in 1933, gave the force of law to any "code of fair competition" set up as a trade association. The provisions varied across industries, and all were presented at Code hearings to explain the provisions or to show the need for protection. During the time of the NRA, the courts largely kept out of decisions regarding unfair competition, one of the key features in arguments both for and against design protection, leaving defendants to the mercies of the Federal Trade Commission or the Better Business Bureau.<sup>40</sup> Under the NRA, the design piracy problem was worked out in the code of each separate industry, and no uniform design code was established. Participants of the National Recovery Administration's Hearing on the Codes of the Dress Industry included such key FOGA proponents as Maurice Rentner, chairman of the FOGA; Samuel Zahn, chairman of the Dress

Creators' League of America; and Irene Blunt, executive secretary of the National Federation of Textiles and sometimes called the "first lady of design protection."<sup>41</sup> Although the Supreme Court found the National Industrial Recovery Act unconstitutional in May 1935, the diverse perspectives concerning the concepts of originality, adaptation, and copying relative to design piracy provide critical insight into the attitudes of leading apparel insiders.<sup>42</sup>

The combination of elements that resulted in an original design, and the point at which an adaptation became a copy, was passionately contested by presenters at the NRA hearings. It was generally agreed that adaptations were acceptable, and a normal aspect of fashion circulation. Maurice Rentner maintained that trends could be imitated, but it was a specific combination of elements that set original creations apart. Rentner argued that likenesses of a certain design or "derivation through inspiration" were acceptable as long as manufacturers and retailers did not present "only insignificant changes in detail."<sup>43</sup> The difficulty lay in the understanding that all designers were in some sense "adapters," and that some ideas were the result of "spontaneous generation." An example of this was widespread use of the decorative motifs from King Tut's tomb, popular in many styles in the early 1920s.<sup>44</sup>

The Guild had, in fact, established a relatively undemanding method of registering designs within its Registration Bureau. In their defense, Rentner contended that "style takes in the material which the designer thinks up, a certain color, a combination of the material designed by the textile house, and other trimmings that were decided by other houses, which the designer takes and puts together and creates a style. It may be an imitation but it is an original so far as combining these things together."<sup>45</sup> He conceded, however, that "no fashion creator will assert that everything about every dress he offers is new" and that the controversy over design piracy was largely "a conflict of individual interest."<sup>46</sup> An exact definition of an original design remained ambiguous.

*Entitlement to Fashion*

According to the Guild, women purchased apparel for the following reasons: “utilitarian, 15%; sanitation and health, 15%; and fashion, 70%.”<sup>47</sup> Style was considered by most in the industry to be of “overshadowing importance,” and as a result, there were frequent debates about origins of fashion and style change.<sup>48</sup> As early as the 1890s, style and fashion change had become the driving forces in growth of both the women’s ready-made clothing industry and the large department stores. By the 1930s, however, it seemed clear to manufacturers where and how style diffusion, if not origination, occurred - through design piracy.<sup>49</sup> What was not clear was whether it was generally beneficial or detrimental to the industry or to the consumer.

One of the issues that arose in most arguments against any attempt to control copying at the lower price points centered on the “ethical” need to provide women of lower incomes with fashionable clothing that did not set them apart. Copying practices in the industry led to the widely held belief that fashion flowed rapidly from high priced designs to the bargain basement. This presumably led to a democratization of style that allowed women of all classes to wear the latest fashion, even if it wasn’t in the highest quality. In addition copying produced a diversity of style variations that ultimately gave the consumer more from which to choose.<sup>50</sup> Hence, moderate and lower price firms contended that they provided a service to low income women.

In the NRA hearing, Samuel Zahn was asked whether he or members of his league “ever considered the fact of design piracy from the consumers’ viewpoint, that is, why should not the stenographer or the shop girl wear a dress just as beautiful as the society leader.”<sup>51</sup> To this question, met with applause by the audience as recorded by the stenographer, Zahn replied “dresses of a \$3.75 design and style or \$2.85 can be prettier than a dress that sells at \$10.75.”<sup>52</sup> He continued, stating that members of the Dress Creators League of America

came to the conclusion that the people who buy \$3, \$4, \$6, \$7 merchandise are entitled just as much to originality as the people who buy \$50, \$60, or \$100 merchandise; that



there is no reason why the stenographer should be embarrassed when she walks down the street and meets the same dress, even though the other person paid much more than she. There is no reason why a woman of limited means should not have originality in her dress as well as the woman who paid a large amount of money.<sup>53</sup>

While Zahn may have been soliciting audience and NRA endorsement, his statement is representative of the ambiguity of the design copying issues. Indeed, the women who bought lower price dresses probably did not want to see other women wearing the same design. But for the low price dress manufacturers, the cost of hiring a designer and making “original” designs was prohibitive. Meiklejohn also observed that there was a possibility of dress becoming a “badge of class distinction” if all copying was prohibited. In other words, women of limited means preferred to dress in styles that were as similar as possible to the high end designer dresses.<sup>54</sup> Partly at issue was the fact that there was certainly not the same customer for both cheap and more expensive dresses, and “consumers of better quality products are unwilling to wear models that are common and cheap.”<sup>55</sup>

These consumers of better dresses were also a focus of the Guild and the Guild’s protective affiliates in the issue of copying, but for a different reason. Zahn offered a counterpoint to his above argument. This was the idea that “a woman does not object when she sees a copy of a dress of at least the same quality that she has purchased. It is seeing the same dress of a cheaper quality that she objects to.”<sup>56</sup> A woman of higher income or the “discriminating consumer,” under copying conditions, was unable to purchase distinctive designs with any assurance that the design would not be copied and the uniqueness immediately ruined. Women became dissatisfied with an original design when they saw copies, and dissatisfied with the retailer who sold her the design. The original higher priced garment would be returned to the retail establishment. This lowered the net profit of the retailer, and decreased the number of reorders the original manufacturer would receive. According to Clay Meyers, the optimum retail situation in terms of profit was to be able to have a dress sell so well that a reorder could be

placed. If retailers had to exist and make profits on the “constant turnover in styles with the odds and ends that are left, the markdowns which we take to meet competition on the next corner, in the next block, we will be lost.”<sup>57</sup> Hence the arguments concerning benefit or loss to the consumer became entangled with retailer’s concerns about both profit and store image.

### *Style and Economic Issues*

The problem of design piracy was generally acknowledged to be a price issue. Only when the copy was marketed in the same price bracket as the original did the issue of property rights become more important than the issue of price. Copying shortened the life of a product to the distributor, to the retailer, and to the customer. As copies inundated the various price lines of the dress industry, higher priced merchandise was knocked off and “killed.”<sup>58</sup> The higher priced merchandise would be returned to the retailer by the disgruntled consumer and the retailer would thus cancel remaining orders or not place re-orders. The protection of designs could potentially eliminate rapid design changes, which in turn would lengthen the seasons of operations and avoid wastes resulting from the rapid turnovers.<sup>59</sup> The assumption was that the waste that resulted from the shortened lifespan of a garment, and the frequent turnover of designs, was ultimately reflected in higher prices and poorer quality. This was considered a tremendous economic disadvantage to consumers and businesses through the lowering of standards, both in the quality of the goods and in the conditions of workers.<sup>60</sup>

This position was underlined by the contention that the “pernicious practice of piracy contributed substantially to the bankruptcy of many concerns engaged in original style creation.”<sup>61</sup> Copies of successful lines were invariably sold at a lower price than the original dress lines, as copyists saved on product research, development and production costs, and avoided the pitfalls of producing unsuccessful lines. But they regularly produced merchandise of inferior quality and materials. As copying occurred at all price ranges in the dress industry, the

Guild felt justified in extension of its program of protection into the lowest price merchandise. In the existing business climate, the manufacturers of high quality and high priced merchandise assumed that it was the copiers who made their businesses vulnerable, while those who sought self-preservation copied simply to stay in business.<sup>62</sup> There was a loss of incentive to create and invest in designing original goods. Many manufacturers did not intend to spend money on creation and designing costs, when copying was so easy and profitable.

*The Debate over Labor and Employment Issues*

Labor issues and the general economic health of the industry provided the framework for a compelling argument in support of copy regulation. According to those who sought to eliminate piracy, design protection not only lengthened the lifespan of a style, it also encouraged creation of original designs. As a result, there would be an increase in the number of attractive pieces on the market at any one time. Protection would also have the effect of “selling a larger volume of the dresses because the woman who wears the dress desires to keep in style.”<sup>63</sup> The argument was that consumer demand would, in turn, be stimulated, benefit the industry as a whole, and therefore avert insolvencies. Employment would also be stimulated, as the array of creative, original, quality merchandise, even in the lowest prices, would have an “emotional and decorative appeal so essential to maintain the level of production...that would afford employment to many thousands of dress workers” in the United States industry.<sup>64</sup>

As already stated, design pirates were able to eliminate work/design processes. In order to undersell the original manufacturer, pirates used less labor and paid lower wages. Machine labor also was substituted for hand labor. According to Zahn, it was labor that was victimized severely by piracy. By reducing the number of man hours per dress it was possible to reproduce an original design at a lower price. He stated that in his firm’s price range of \$10.75 to \$16.75,

“from three to four man hours are ordinarily required, this being five to six times as much as is consumed in the production of copies.”<sup>65</sup>

Conversely, those critics of style protection stated that the growth of the fashion industry was in fact due to the ability of lower price manufacturers to supply affordable fashionable merchandise. The rapid turnover of styles not only increased the volume of business generated by the industry, but also permitted consumers of all economic means to participate in the fashion process. Lower price manufacturers also pointed out the economic infeasibility of employing designers to create original merchandise. As stated by fashion writer Chas Call, originals in lower prices “would be nice,” but the main purpose of these firms was “bringing out some nice copies of slightly higher priced dresses.”<sup>66</sup> Since salability of dress designs was based on the style or overall elements of a trend, who in fact benefited from design protection? According to Zahn, fashion individuality strengthened the selling appeal of his merchandise. The protection of original goods could potentially decrease the number of new firms who relied on copying to survive, and save the better firms from insolvency.<sup>67</sup>

Meyers suggested that piracy also hurt designers and aspiring designers. He stated:

We have three colleges in Pittsburgh that are developing stylists, designers, technicians. Those girls will all be looking for something to do. The most pitiful thing in my experience is the great number that are coming in and looking for work, capable, excellent, clever people. I think piracy is narrowing down this field.<sup>68</sup>

Others agreed with Meyers. There was an increase in the number of designers hired in the mid-1930s, which Meiklejohn suggested was the direct result of design protection measures, as the “cheap firms” were forced to hire designers. On the other hand, some firms purchased designs from free-lance designers, a practice that left them open to victimization. As one stated, “Once seen, style ideas are so easily stolen that few free-lance designers are ever paid for all the creations they show to manufacturers.”<sup>69</sup> With this said, the Design Creators League of America,

organized in 1934, issued a call to the FOGA that if so consulted they, the designers, could actually do something about eliminating design piracy.

The sale of copied merchandise at lower prices had one other effect on designers - the original merchandise was no longer salable. This was a primary motivating force in the rapid turnover of styles. According to Zahn, original manufacturers needed approximately 20 to 25 new styles per week in order to stay ahead of design pirates.<sup>70</sup> Other designers also described a work environment that demanded as many as 1500 new models a year. Conversely, all of these factors were also suggested as contributing factors in the “complete dependence of some industries upon foreign sources for designs.”<sup>71</sup>

#### *Quality considerations*

According to Rentner, the loss of billions of dollars in available business in the dress industry was caused by the standardization of styles and the depreciation of quality in women's garments.<sup>72</sup> Copying, considered “the bane of the dress industry,” caused women to “drift away from quality original merchandise.”<sup>73</sup> Supporters of the provisions against piracy, and other abuses in the trade, felt manufacturers who competed in terms of quality rather than price, would “stay in business longer, have a more decent existence, [make a more] legitimate profit by changing a dress design a little so he does not kill the sale of the other man, and will not have to sweat his labor.”<sup>74</sup> According to Irene Blunt, Director of the Industrial Design Registration Bureau of the Silk Association, original designs cost only \$35 to \$50 and the only way copyists saved on producing costs was through the cheapening of fabric, “by making it of less satisfactory construction, by using cheaper dyers, and printers.”<sup>75</sup>

F. Eugene Ackerman, president of the Forstmann Woolen Company of New Jersey, went so far as to say that design piracy had “made it necessary for textile manufacturers to make cheaper and cheaper and more and more shoddy fabrics in order to meet the demand for prices”

dictated by the demands of style pirates.<sup>76</sup> He went on to say that piracy had so ruined the textile industry, that “legitimate manufacturers and merchants today are obligated to advertise and guarantee against shoddiness.”<sup>77</sup> According to Miss Ruth O’Brien, chief of the Division of Textiles and Clothing of the Bureau of Home Economics of the United States Department of Agriculture, in a speech before the Boston Conference on Distribution:

One fact which seems to stand out clearly is that many consumers have money and need to buy but are very skeptical about getting their money’s worth. It is chiefly because consumers have no measure of quality that they are misled into buying inferior products, often with the result that inferior goods drive superior goods off the market.<sup>78</sup>

Whether or not these were justifiable issues in the control of design piracy, the fact that competition had become based to a large extent on price (and therefore quality) was clearly affecting the overall organization of the industry.

*Did the FOGA monopolize the industry?*

Although the Guild was judged a monopoly by the FTC, the Guild’s effective control over the dress industry is somewhat unclear. According to the master’s report of W.M Filene’s Sons Co. v. the Fashion Originators’ Guild, in the spring of 1936, Guild members accounted for only 130 of the 2,130 dress manufacturers in New York and produced only 6% of the total 84,000,000 dresses manufactured in 1935.<sup>79</sup> In contrast, the Supreme Court, in the case of the Fashion Originators’ Guild v. the Federal Trade Commission, found that in 1936 Guild members sold more than 38% of all women’s garments wholesaling from \$6.75 to \$10.75 and more than 60% wholesaling at \$10.75 and above.<sup>80</sup>

In the Supreme Court’s opinion, the Guild’s power was great because both competition and demand for dresses by the consuming public made it necessary for most retailers to stock at least some of the guild members’ products. This opened them up to the demands of the anti-piracy program instituted by the Guild.<sup>81</sup> The power of the Guild was strengthened by the cooperation of members of the National Federation of Textiles, who elected to sell their products

only to those garment manufacturers who in turn agreed to sell exclusively to cooperating retailers. Manufacturers were certainly responding to demand for cheaper clothing in the beginning years of the depression and felt threatened by any action that would limit their ability to supply that market. One estimate from the period indicated that over half (55%) of dress manufacturers produced at the \$3.75 and under price category.<sup>82</sup> Meiklejohn stated that by the late 1930s, the guild's programs were no longer representative of the industry as a whole.<sup>83</sup> The difficulty of identifying and controlling copies at the lower price points may ultimately have become insurmountable.

## **Conclusion**

The Guild's program of self-regulation against design piracy was short-lived. While the case of the FOGA v. the FTC is still considered a pivotal design copyright case in legal proceedings, it has ultimately become a footnote in the history of the design piracy debate within the apparel industry itself. It is important to bring together the two histories, of the legal case and of the apparel industry, for complete insight into copyright problems.<sup>84</sup> The FOGA attempted to guard against action that would curb the freedom of the artist, and fought continuously against regimentation and the stifling of new ideas, but it was the need for wide-reaching control within these programs to support American design that violated the Sherman and Clayton anti-trust legislation. From 1914 to 1983, seventy-three bills to protect designs through legal measures were introduced to Congress, and ultimately failed due to the ambiguities and controversies inherent in a system of design protection.<sup>85</sup> The legality of "creatively borrowing" others' ideas has produced such Internet websites as Anyknockoff.com and Designer Style for Less. These sites do not come without controversy, however. In a summer 2003 article in the popular press magazine, *USA Weekend*, Mitch Clow, international trade specialist for the

U.S. Bureau of Customs and Border Protection suggested the possibility that at least some apparel firms producing counterfeit and pirated apparel “fund organized crime and terrorism.”<sup>86</sup>

The ease and speed of piracy has reached new proportions in this age of global communications, as copies often reach stores before the originals and at a fraction of the cost. Large apparel producers continue to use price to compete, and are able to keep wholesale costs low for some of the same reasons that existed in the 1930s. They eliminate at least a portion of the cost of developing original designs and patterns. While some designers still attempt to fight the problem, others compare it to the process of sampling in the music industry. According to Tom Wolfe, “copying became referencing and the stigma was removed.” Joan Kaner observed that “today’s knock-off houses provide good value and style,” making it a better buy than “overpriced” designer houses that spend a lot on advertising and fashion shows.<sup>87</sup> While the apparel industry continues to debate the rubric of “referencing,” the FOGA is an important early case highlighting the ethical, economic, and social considerations of a program of industry-wide self-regulation.



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<sup>1</sup> Marcketti, S. B., & Parsons, J. L. (2006). Design piracy and self regulation: The Fashion Originators' Guild of America: 1932-1941. *Clothing and Textiles Research Journal*, 24(3), 214-228.

<sup>2</sup> The knock-off process is taught in clothing courses and is a component of some pattern making textbooks. See for example, Norma R. Hollen and Carolyn M. Kundel, *Pattern Making by the Flat-Pattern Method* (Upper Saddle River, NJ: Prentice Hall, Inc., 1993), and Ruth E. Glock and Grace I. Kunz, *Apparel Manufacturing: Sewn Products Analysis* (Upper Saddle River, NJ: Prentice Hall, Inc., 2000), 55.

In 1994, a French commercial court ordered Polo/Ralph Lauren to pay \$383,000 to Yves Saint Laurent for plagiarizing a tuxedo dress design. Teri Agins, "Fashion Knockoffs Hit Stores before Originals as Designers Seethe," *The New York Times*, August 8, 1994, 1.

<sup>3</sup> Agins, 1; Cathy Horyn, "Is Copying Really a Part of the Creative Process?," *The New York Times*, April 9, 2002, 1. Staci Wood, "Buying Knockoffs is a Slippery Slope," *USA Weekend*, July 27-29, 2003, 17.

<sup>4</sup> Margaretta Stevenson (ed.), *How the Fashion World Works: Fit Yourself for a Fashion Future*, Addresses given at The Fashion Group's Training Courses (New York: Harper & Brothers Publishers, 1938), 6, and Helen Everett Meiklejohn, *Dresses: Impact of Fashion on a Business* (New York: McGraw-Hill Book Co., Inc., 1938), 20. (Reprinted from Price and Price Policies, by Walton Hamilton and Associates for the Educational Department, International Ladies' Garment Workers' Union.) Meiklejohn used class issues to support the practice, stating that "the copying of dress styles gives legitimate aid and comfort to the underprivileged."

<sup>5</sup> Sandra S. Buckland, "Promoting American Fashion 1940 through 1945: From Understudy to Star" (Ph.D. diss., The Ohio State University, 1996), 46.

<sup>6</sup> These primary sources were found in the following locations: The Fashion Institute of Technology's Costume Collection and Special Collections, the Metropolitan Museum of Art's Costume Institute, the Metropolitan Museum of Art's Library, and the New York Public Libraries Science, Business, and Industry Library.

<sup>7</sup> Meiklejohn, 303. Problems with piracy continued throughout the 1910s.

<sup>8</sup> See for example, Ida M. Tarbell, *The Business of Being a Woman* (New York: The Macmillan Co., 1912), 122-123.

<sup>9</sup> Julius Henry Cohen, *Law and Order in Industry: Five Years Experience* (New York: The Macmillan Co., 1916), 88.

<sup>10</sup> Bertha June Richardson, *The Woman Who Spends: A Study of Her Economic Function* (Boston, MA: Thomas Todd Co., 1916), 69. This was originally published in 1904. See also Emma M. Hooper, "Remodeling Last Year's Gowns," *The Ladies' Home Journal*, June 1893, 26.

<sup>11</sup> *Women's Wear*, Oct. 29, 1910, as quoted in Bernard Smith, "A Study of Uneven Industrial Development: The American Clothing Industry in the Late 19th and Early 20th Centuries," (Ph.D. diss., Yale University, 1989), 202.

<sup>12</sup> May Allinson, *Industrial Experience of Trade School Girls in Massachusetts* (Boston: The Department of Research: Women's Educational and Industrial Union, Studies in Economic Relations of Women, Vol. 9, 1917), 217.

<sup>13</sup> Paul H. Nystrom, *Economics of Fashion* (New York: The Ronald Press Co., 1928), 425.

<sup>14</sup> *Costume Design* (New York: Federated council on Art Education and the Institute of Women's Professional Relations, 1936), 7.

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<sup>15</sup> *Women's Wear* contains numerous articles on the various trade organizations and attempts to control both retail and wholesale trade practices. See for example, "Trade Ethics to be Drawn up by Committee," *Women's Wear*, October 13, 1922, 1, and "New Organization of Model Makers for All Trades," *Women's Wear*, March 22, 1923, 2. The Fashion Group was founded in 1931, after several years of planning meetings that began in 1928.

<sup>16</sup> John Keating, speaking as legal counsel for the Code Authority, on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 25.

<sup>17</sup> "Dress Trade's Growth Brings Union Problem," *Women's Wear*, May 2 1932, 13.

<sup>18</sup> Jessie Stuart, *The American Fashion Industry* (Boston, MA: Simmons College, 1951), 28.

<sup>19</sup> Fashion Originators' Guild of America, Incorporation Papers, March 1932, New York Department of State.

<sup>20</sup> Ibid.

<sup>21</sup> "Design Protection Gains in Many Lines," *The New York Times*, sec. 2, May 6, 1934, 19.

<sup>22</sup> "Firm Admitted to Guild," *The New York Herald Tribune*, January 16, 1935, 34.

<sup>23</sup> "To Bring Back the Demand for Good Clothes," *Women's Wear*, March 29, 1932, 9.

<sup>24</sup> "Queries Cover FOGA Price Range Scope," *Women's Wear*, April 23, 1936, 31.

<sup>25</sup> "Guild's Work Good in Upper Brackets," *The New York Times*, February 23, 1936, 17.

<sup>26</sup> "Complete Text of Master's Report That Upholds FOGA's Style Protection Is No Monopoly," *Women's Wear*, November 10, 1936, 39.

<sup>27</sup> "Designs Filed at Peak," *The New York Times*, sec. 2, September 13, 1936, 8.

<sup>28</sup> "FOGA Adds Four Stores to 'Red Card' List," *Women's Wear*, February 14, 1936, 1, 18.

<sup>29</sup> "Guild Extends Shopping Staff," *The New York Times*, September 1, 1936, 38.

<sup>30</sup> The Dress Creators' League of America, Inc., Incorporation Papers, November 9, 1932, New York Department of State; Stephen Hartman, "Protest Move to Bar Dress Style Copying," *The New York Times*, September 25, 1934, 32.

<sup>31</sup> Chas Call, "Pleasing Guilds and Pleasing Chains Two Different Games," *Women's Wear*, November 26, 1935, 14.

<sup>32</sup> "Designs Filed At Peak," 8.

<sup>33</sup> "Stores Will Test Fashion Guild Ban," *The New York Times*, February 20, 1936, 38.

<sup>34</sup> M.D.C. Crawford, "End of Rash Individualism Started Era of Good Trade," *Women's Wear Daily*, January 22, 1936, 4.

<sup>35</sup> "Ban on Fashion Shows," *The New York Times*, November 26, 1933, 15; "Guild Avers New Pledge Is No Policy Shift," *Women's Wear Daily*, December 5, 1935, 1; "Guild Not To Copy Models Of Retailers" *Women's Wear Daily*, April 11, 1935, 2; "Guild Warns Against Sales To Consumers," *Women's Wear Daily*, April 9, 1935, 25; *Fashion Originators' Guild of America v. Federal Trade Commission*, 312 U.S. 457-468 (1941); Ira Rentner, The Reminiscences of Maurice Rentner From Varying Perspectives, August 1982, The Oral History Collection of the Fashion Institute of Technology. End of month, or EOM, refers to the cash discount and the net credit periods given to retailers. Some manufacturers attempted to compete by providing better discounts for early payment. The Guild urged manufacturers to give retailers no more than an 8% discount for EOM discounts.

<sup>36</sup> “Guild Pushes Fight To Protect Styles,” *The New York Times*, February 16, 1936, 9.

<sup>37</sup> “Rentner Raps Tactics Used by Retailers,” *Women’s Wear*, August 9, 1936, 5.

<sup>38</sup> *Fashion Originators’ Guild of America v. Federal Trade Commission*, 312 U.S. 457-468 (1941).

<sup>39</sup> Maurice Rentner, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 114.

<sup>40</sup> Zecharias Chafee, *Unfair Competition*, 53 Harvard Law Review 1289, 1289-1321 (June 1940).

<sup>41</sup> Sylvan Gotshal, *Today’s Fight for Design Protection* (New York: Sylvan Gotshal, 1957), 3.

<sup>42</sup> For more information on the N.R.A. see: Chafee, 1289-1321; Karl Fenning, “N.R.A. Codes,” *Journal of the Patent Office Society* (March 1934): 189-203; Robert Himmelberg, *The Origins of the National Recovery Administration* (New York: Fordham University Press, 1976).

<sup>43</sup> Rentner, 113.

<sup>44</sup> Meiklejohn, 303. There are numerous articles in *Women’s Wear* in 1922 and 1923 related to failed attempts to copyright designs based on tomb images and artifacts and even attempts to gain copy right of the name itself.

<sup>45</sup> Rentner, 105.

<sup>46</sup> Rentner, 113.

<sup>47</sup> “General Rather than Specific Style Appeal Urged on Stores,” *Women’s Wear*, October 10, 1932, 32.

<sup>48</sup> Meiklejohn, 303.

<sup>49</sup> Pirates use a variety of methods in copying merchandise. Some purchased designs at early fashion showings or retail establishments, and reproduced the designs. Other copyists may simply have glanced at an item displayed in a store, during a fashion show, or pictured in advertisement and produce reproductions. Other practices include the bribing of competitors’ employees to describe design activities and the placing of spies in a competitor’s factory for the purpose of observing and copying the most salable items. By nature of the job requirements, contractors were also heavily involved in piracy. Because they engaged in volume production on short notice, the copyists could introduce replicas within 24 hours after the introduction of the original garment. Contractors also solicited orders on a design from other manufacturers, thus causing almost simultaneous production of the same item by numerous concerns (See for example, Aaron Johnson and Florence Fitch, “Design Piracy: The Problem and its Treatment under N.R.A. Codes,” *National Recovery Administration Materials ser. 52* (March 1936).

<sup>50</sup> Samuel Zahn, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*.

<sup>51</sup> Zahn, 38.

<sup>52</sup> Zahn, 36.

<sup>53</sup> Zahn, 36.

<sup>54</sup> Meiklejohn, 337.

<sup>55</sup> Magee, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 19.

<sup>56</sup> Zahn, 43.

<sup>57</sup> Clay Meyers, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 242.

<sup>58</sup> A low priced copy was frequently said to “kill” the higher priced dress, in that no more sales of the higher end dress occurred.

<sup>59</sup> Johnson and Fitch, 8.

<sup>60</sup> Zahn, 46.

<sup>61</sup> “Complete Text of Master’s Report that Upholds FOGA’s Style Protection is No Monopoly,” 10.

<sup>62</sup> Johnston and Fitch, 132.

<sup>63</sup> Zahn, 48.

<sup>64</sup> Rentner, 111.

<sup>65</sup> Zahn, 33.

<sup>66</sup> Call, 37.

<sup>67</sup> Zahn, 37.

<sup>68</sup> Meyers, 240.

<sup>69</sup> *Costume Design* (New York: Federated Council on Art Education and the Institute of Women’s Professional Relations, 1936), 14.

<sup>70</sup> Zahn, 41.

<sup>71</sup> Johnson and Fitch, 135.

<sup>72</sup> “Hits Garment Practices,” *The New York Times*, October 29, 1936, 46.

<sup>73</sup> “Fashion Originators to Confer Shortly with High Grade Stores,” *Women’s Wear Daily*, sec. 2, March 7, 1932, 3.

<sup>74</sup> Keating, 27.

<sup>75</sup> Irene Blunt, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on the Code of Fair Competition for the Dress Manufacturing Industry*, 37.

<sup>76</sup> Eugene Ackerman, speaking on November 15, 1934 to the National Recovery Administration, *Hearing on The Code of Fair Competition for the Dress Manufacturing Industry*, 337.

<sup>77</sup> Ackerman, 339.

<sup>78</sup> Ruth O’Brien, *Boston Conference on Distribution* (Boston, MA: Retail Trade Board, Boston Chamber of Commerce, 1934).

<sup>79</sup> *WM Filene’s Sons Co v. Fashion Originators’ Guild*, 90 F.2d, 556 (1937).

<sup>80</sup> *Fashion Originators’ Guild of America v. Federal Trade Commission*, 312 U.S. 457-468 (1941).

<sup>81</sup> Ibid.

<sup>82</sup> *Costume Design*, 28.

<sup>83</sup> Meiklejohn, 337.

<sup>84</sup> The history of the apparel industry is often misunderstood or not completely taken into account in legal reviews. In a Harvard Law School article, the author states that in the past “American designers traditionally did not copy each other,” and argues that it is contemporary technology that makes copying so fast, easy and widespread. This is clearly not the case when the historic record is examined. See Christine Magdo, “Protecting Works of Fashion from Design Piracy,” *LEDA at Harvard Law School*, <http://leda.law.harvard.edu/leda/data/36/MAGDO.html>, retrieved May 18, 2004.

<sup>85</sup> Rocky Schmidt, *Designer Law: Fashioning a Remedy for Design Piracy*, 30 UCLA L. Rev. 861, 861-880 (1983).

<sup>86</sup> Wood, 2003, 17.

<sup>87</sup> Agins, 1; Horyn, 1.